

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7111

Petition of Great Bay Hydro Corporation, Sloan Group)
Ltd., and Sloan Acquisition Corp. for approval of an)
indirect transfer of control)

Order entered: 11/1/2005

I. INTRODUCTION

On September 28, 2005, a petition was filed by Great Bay Hydro Corporation ("GBH"), for itself and on behalf of Sloan Group Ltd., and Sloan Acquisition Corporation (together, "Petitioners") requesting Public Service Board ("Board") approval, pursuant to 30 V.S.A. § 107, for a transaction in which Sloan Acquisition Corporation will offer to purchase all outstanding shares of common stock of GBH's parent company, BayCorp Holdings, Ltd. ("BayCorp"). In addition, Sloan Group, Ltd. seeks Board approval to acquire control of BayCorp and GBH as a result of conversion of certain promissory notes held by Sloan Group Ltd. that are convertible into shares of BayCorp common stock.

On October 6, 2005, the Vermont Department of Public Service Department ("Department") filed comments on this petition, which include a recommendation that the requested transfer of control be approved.¹

On October 27, 2005, an affidavit of Frank W. Getman, Jr., President of BayCorp and GBH, was filed. In that affidavit, Mr. Getman certified that the statements contained in the petition, as well as the documents referenced therein, are true to the best of his knowledge and belief.²

1. Letter of Geoffrey Commons, dated October 6, 2005.

2. Affidavit of Frank W. Getman, Jr., dated October 27, 2005.

For the reasons set forth below, we grant the Petitioners's request.³

II. FINDINGS

1. GBH is a corporation duly organized and existing under the laws of the State of New Hampshire. Petition at 1.
2. All of GBH's issued and outstanding stock is held by BayCorp. Petition at 1.
3. Sloan Group Ltd. is a privately-held Bahamas international business corporation. Sloan Acquisition Corp. is a Delaware corporation and a wholly-owned subsidiary of Sloan Group Ltd. Joseph Lewis, a citizen of Great Britain, and a permanent resident of the Bahamas, controls both Sloan Group Ltd. and Sloan Acquisition Corp. Petition at 2.
4. Sloan Acquisition Corp. plans to acquire all of the common stock of BayCorp in a tender offer, and then Sloan Acquisition Corp. plans to merge into BayCorp. BayCorp will remain as the surviving corporation. Any issued and outstanding shares of BayCorp common stock not purchased by Sloan Acquisition Corp. in the tender offer will be purchased for cash at the same price per share as in the tender offer upon closing of the merger. Petition at 2-3.
5. Sloan Group Ltd. may acquire control of BayCorp and GBH upon conversion of convertible notes of BayCorp that entitle Sloan Group Ltd. to receive shares of BayCorp common stock beginning on November 15, 2005. The conversion of notes may occur as a stand alone transaction or along with the tender offer and merger. Petition at 3.
6. By acquiring the common stock in BayCorp, Sloan Acquisition Corp. will indirectly acquire a "controlling interest" in GBH within the meaning of Section 107 of Title 30, which requires the Board's approval. Petition at 3.
7. By acquiring the common stock in BayCorp through conversion of convertible notes, Sloan Group Ltd. will indirectly acquire a "controlling interest" in GBH within the meaning of Section 107 of Title 30, which requires the Board's approval. Petition at 3.
8. On March 23, 2004, the Board issued a Certificate of Public Good ("CPG"), with specific conditions, to GBH for ownership and operation the Newport Generating Facility Units

3. Neither the Petitioners nor the Department have requested a hearing on this Petition. Letter of Barbara G. Ripley, dated October 4, 2005, at 1; letter of Geoffrey Commons, dated October 6, 2005, at 2.

1, 2, 3 and 11, the Troy Generating Facility, the West Charleston Generating Facility, the Seymour and Echo non-power dams and the Newport diesel generating facilities. Docket No. 6917, Order of 3/23/04.

9. GBH owns and operates the Clyde River Hydroelectric facility ("Project"), pursuant to FERC License Project No. 2306. This is a 4.80 MW merchant generating facility involved in wholesale electric generation and involving no direct retail sales to retail electric customers. Petition at 2.

10. Currently, power is generated from the Newport 1, 2, 3 facility. The West Charleston facility is licensed, but is not currently operating. Petition at 2.

11. GBH and the State of Vermont Agency of Natural Resources are currently negotiating the conveyance of certain project and non-project lands that are not needed for power generation from GBH to the State of Vermont for conservation and recreation purposes. Petition at 2.

III. CONCLUSION

By acquiring all of the common stock of BayCorp, Sloan Acquisition Corp. and/or Sloan Group Ltd. will gain indirect control of GBH, a company subject to Board jurisdiction. 30 V.S.A. § 107 requires a company to obtain Board approval for indirect (and/or direct) acquisition of more than ten percent of the outstanding securities of a company subject to Board jurisdiction, and requires the Board to find that such a transaction will promote the public good.

The transaction, as proposed here, will leave GBH as the owner of the generation facilities which were the subject of the CPG issued by the Board in Docket No. 6917.⁴ The Petitioners have represented that the proposed stock transfer and/or note conversion will have no effect on the operation of these generation facilities, and that the management and operations staff of GBH will remain the same⁵. The Petitioners also have represented that the proposed transaction will have no effect upon negotiations that are underway between GBH and the

4. These facilities were formerly owned by Citizens Communications Company, d/b/a Citizens Energy Services.

5. Petition at 2 and 3.

Vermont Agency of Natural Resources concerning the sale of land to be used for recreational and conservation purposes.⁶

Furthermore, following the proposed transaction(s) GBH will continue to be subject to its FERC License and its State of Vermont Agency of Natural Resources Section 401 Water Quality Certification, as amended by the Water Resources Board on July 11, 2003, and on February 2, 2004.⁷ GBH also will continue to be subject to the conditions set forth in the CPG issued by the Board in Docket No. 6917.

The Petitioners assert that the proposed transfer(s) will improve the liquidity and scope of GBH's financial resources.⁸ Moreover, as a merchant generator, GBH has no recourse to Vermont ratepayers for payment of any of its costs.⁹ Therefore, the proposed transactions do not appear to pose any harm to Vermont ratepayers.

For the foregoing reasons, we conclude that the proposed transactions will promote the public good.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The indirect transfer of a controlling interest in Great Bay Hydro Corporation to Sloan Group Ltd. and/or Sloan Acquisition Corp. is approved, pursuant to 30 V.S.A. § 107.
2. Petitioners shall notify the Public Service Board of the completion of this transfer within one week thereafter.

6. Petition at 2.

7. Petition at 3.

8. Petition at 4.

9. See, letter of Geoffrey Commons, dated October 6, 2005, at 2.

Dated at Montpelier, Vermont, this 1st day of November, 2005.

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|------------------------|---|----------------|
| <u>s/James Volz</u> |) | |
| |) | PUBLIC SERVICE |
| |) | |
| <u>s/David C. Coen</u> |) | BOARD |
| |) | |
| |) | OF VERMONT |
| <u>s/John D. Burke</u> |) | |

OFFICE OF THE CLERK

FILED: November 1, 2005

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.